

TITLE 16. BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

NOTICE IS HEREBY GIVEN that the **Board of Vocational Nursing and Psychiatric Technicians** (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the **Department of Water Resources, 1416 - 9th Street, Auditorium, Sacramento, CA 95814, (916) 653-5791, at 10:00 A.M., on Tuesday, December 20, 2005.** Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 P.M. on Monday, December 19, 2005, or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by section 2854 of the Business and Professions (B&P) Code; and 6253.4 of the Government Code; and to implement, interpret or make specific sections 2878.1, 2892.6 and 2895 of the B&P Code, the Board is considering changes to Division 25 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Pursuant to B&P Code, section 2854, the Board may adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable it to carry out the provisions of these chapters. Additionally, B&P Code, Sections 2892.6 and 2895 specify the current fee assessments and the statutory fee ranges for the Vocational Nursing Program.

History of the Board's Fee Regulations

When the Board of Vocational Nursing was created in 1951, the Legislature established a fixed fee schedule *in the Board's enabling laws*. Specific fees were set forth in Section 2895 of the Business and Professions Code. The Board had no discretion to alter those fees.

In 1952, the Legislature amended Section 2895 and gave the Board the authority to fix fees within dollar amount ranges set out in the statute. Accordingly, the Board promulgated a fee schedule through its regulations. This arrangement continued until January 1, 1991 and January 1, 2000. During those periods, Sections 2892.6 and 2895 were amended to again establish a *statutory* fee schedule. The language requiring the Board to fix its fees in regulation was eliminated. Instead, the Legislature established, by statute, *initial minimum* fees. On January 1, 2000, the Legislature also established statutory fee ranges which gave the Board the discretion to later adjust those fees upward as long as they did not exceed the statutory maximums.

The 1991 and 2000 statutory changes had the effect of superseding or repealing the Board's existing fee regulations which were only valid through December 31, 1990. For example, in January 1991, Section 2895 added a number of fee categories that were not then included in the

Board's existing regulations relative to duplicate licenses, endorsement fees and continuing education course providers. The fees for these three fee categories were established in statute. Consequently, those additional statutory fees have been assessed by the Board since January 1, 1991 even though they do not appear in the Board's superseded fee regulations.

Therefore, when assessing the fee changes being proposed by the Board, one has to compare them with the fees listed in Section 2892.6 and 2895 rather than the fees listed in the Board's regulations.

Vocational Nursing Regulations – Amend Sections 2537 & 2537.1 relative to fees and provider fees. The existing regulations cite fee amounts that became obsolete effective December 31, 1990. Since that time, changes to the fee amounts were established in statute on January 1, 1991 and again on January 1, 2000. Consequently, the purpose of this regulatory proposal is to:

- A. Make specific in regulation the current statutory fee assessments delineated in B&P Code, Section 2892.6 and 2895; and
- B. Amend the following revenue categories:
 - Initial License Fees -- From \$100 to \$120
 - Biennial License Renewal Fees -- From \$100 to \$120
 - Delinquent Renewal Fees -- From \$50 to \$60

All of the other fee assessment amounts currently established in statute will remain the same in this regulatory proposal. This regulatory proposal merely clarifies in regulation what is already established by statute.

The fee change is needed to ensure the fiscal solvency of the Vocational Nursing Program and to comply with the budget implementation requirements specified by B&P Code, Section 2878.1 relative to mandatory reporting.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses:

The Board has determined that this proposed regulatory action will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Board has made an initial determination that this proposed regulatory action will not have a significant cost impact on a representative private person or business to incur reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. The proposed regulations do not alter staffing or equipment needs in any small business.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective and less burdensome to affected private persons than the proposal described in this Notice.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board at 2535 Capitol Oaks Drive, Suite 205, Sacramento, California 95833.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name:	Marina Okimoto, Assistant Executive Officer
Address:	2535 Capitol Oaks Drive, Suite 205 Sacramento, CA 95833
Telephone No.:	(916) 263-7845
Fax No.:	(916) 263-7859
E-Mail Address:	www.bvnpt.ca.gov

The backup contact person is:

Name:	Angela Hole, Administrative Assistant
Address:	2535 Capitol Oaks Drive, Suite 205 Sacramento, CA 95833
Telephone No.:	(916) 263-7845
Fax No.:	(916) 263-7859
E-Mail Address:	Angela_Hole@dca.ca.gov

Website Access – Materials regarding this proposal can be found at www.bvnpt.ca.gov.

Board of Vocational Nursing and Psychiatric Technicians

SPECIFIC LANGUAGE

VOCATIONAL NURSING REGULATIONS

California Code of Regulations, Title 16, Division 25, Chapter 1, Article 6:

IMPORTANT NOTE: THE FOLLOWING REGULATIONS WERE SUPERSEDED BY STATS. 1990, CH 1131 (A.B. 4349) AND STATS. 1999, CH. 655 (S.B. 1308) WHICH AMENDED B. & P. CODE §§ 2892.6 & 2895 RESPECTIVELY. CURRENT FEES ASSESSED BY THE BOARD ARE MADE PURSUANT TO THIS STATUTORY LAW

Amend Section §2537. Fees.

The following fees are established:

- ~~(a) The application fee is fifty dollars (\$50.00).~~
- ~~(b) The biennial renewal fee is fifty dollars (\$50.00).~~
- ~~(c) The delinquency fee is twenty-five dollars (\$25).~~
- ~~(d) The reexamination fee for any examination after the first is thirty-five dollars (\$35).~~
- ~~(e) The initial license fee is fifty dollars (\$50.00).~~
- ~~(f) The penalty fee for submitting insufficient funds or fictitious check, draft or order or any bank or depository for payment of any fee to the Board is ten dollars (\$10).~~
- (a) The fee to be paid upon the filing of an application is seventy-five dollars (\$75).
- (b) The re-examination application fee is seventy-five dollars (\$75).
- (c) The biennial renewal fee is one hundred-twenty dollars (\$120). In addition, an assessment of five dollars (\$5) shall be collected and credited to the Vocational Nurse Education Fund, pursuant to section 2895.5 of the Code.
- (d) The delinquency fee is sixty dollars (\$60).
- (e) The initial license fee is one hundred twenty dollars (\$120).

(f) The interim permit fee is forty dollars (\$40).

(g) The duplicate license fee is twenty-five dollars (\$25).

(h) The endorsement fee is seventy-five dollars (\$75).

(i) The penalty fee for submitting insufficient funds or fictitious check, draft, money order, any bank or depository for payment of any fee to the Board is ten dollars (\$10).

NOTE: Authority cited: Section 2854, Business and Professions Code. Reference: Sections 2867.5, 2895 and 2895.5, Business and Professions Code; and Section 6157, Government Code.

Amend Section §2537.1. Provider's Fees.

Pursuant to Section 2892.6 of the Code, the following fees for applications for approval of continuing education courses are established:

~~(a) The fee is \$50 for the first course for which approval is sought.~~

~~(b) The fee is \$5 for each additional course for which approval is sought.~~

~~(c) A \$50 fee must be submitted every two years for initial course approval, followed by a \$5 fee for each additional course.~~

(a) The fee to be paid upon filing of an application for a continuing education provider is two hundred dollars (\$200).

(b) The biennial renewal fee is two hundred dollars (\$200).

NOTE: Authority cited: Section 2854, Business and Professions Code. Reference: Section 2892.6, Business and Professions Code.

Board of Vocational Nursing and Psychiatric Technicians

INITIAL STATEMENT OF REASONS

Hearing Date: December 20, 2005

Subject Matter of Proposed Regulations:

Fee Change for the Vocational Nursing Program

Sections Affected:

- | | |
|--------------------------|-----------------|
| (1) Amend Section 2537. | Fees. |
| (2) Amend Section 2537.1 | Provider's Fees |

Fee Change Proposal

Amend Section 2537 Fees

The existing regulations were superseded by a statutory provision that became effective January 1, 2000. Consequently, the fee amounts cited in the *regulation* are obsolete and need to reflect current fees. Additionally, the Board needs to propose a fee change to ensure that sufficient funds are available to implement a new consumer protection law relative to mandatory reporting

History of the Board's Fee Regulations

When the Board of Vocation Nursing was created in 1951, the Legislature established a fixed fee schedule *in the Board's enabling laws*. Specific fees were set forth in Section 2895 of the Business and Professions Code. The Board had no discretion to alter those fees.

In 1952, the Legislature amended Section 2895 and gave the Board the authority to fix fees within dollar amount ranges set out in the statute. Accordingly, the Board promulgated a fee schedule through its regulations. This arrangement continued until January 1, 1991 and January 1, 2000. During those periods, Sections 2892.6 and 2895 were amended to again establish a *statutory* fee schedule. The language requiring the Board to fix its fees in regulation was eliminated. Instead, the Legislature established, by statute, *initial minimum* fees. On January 1, 2000, the Legislature also established statutory fee ranges which gave the Board the discretion to later adjust those fees upward as long as they did not exceed the statutory maximums.

The 1991 and 2000 statutory changes had the effect of superseding or repealing the Board's existing fee regulations which were only valid through December 31, 1990. For example, in January 1991, Section 2895 added a number of fee categories that were not then included in the Board's existing regulations relative to duplicate licenses, endorsement fees and continuing education course providers. The fees for these three fee categories were established in statute. Consequently, those additional statutory fee categories have been assessed by the Board since January 1, 1991 even

though they do not appear in the Board's superseded fee regulations.

Therefore, when assessing the fee changes being proposed by the Board, one has to compare them with the fees listed in Section 2892.6 and 2895 rather than the fees listed in the Board's regulations.

Specific Purpose:

Pursuant to Business & Professions (B&P) Code, section 2854, the Board may adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable it to carry out the provisions of these chapters. Additionally, B&P Code, Sections 2892.6 and 2895, specify the current fee assessments and the statutory fee ranges for the Vocational Nursing (VN) Program.

The Vocational Nursing Program needs to amend Sections 2537 & 2537.1 relative to fees and provider fees. The existing regulations cite fee amounts that became obsolete effective December 31, 1990. Since that time, changes to the fee amounts were established in statute on January 1, 1991 and again on January 1, 2000. Consequently, the purpose of this regulatory proposal is to:

- A. Make specific in regulation the current statutory fee assessments delineated in B&P Code, Section 2892.6 and 2895; and
- B. Amend the following revenue categories:
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 - Delinquent Renewal Fees -- From \$50 to \$60

All of the other fee assessment amounts currently established in statute will remain the same in this regulatory proposal. This regulatory proposal merely clarifies in regulation what is already established by statute.

The fee change is needed to ensure the fiscal solvency of the Vocational Nursing Program and to comply with the budget implementation requirements specified by B&P Code, Section 2878.1 relative to mandatory reporting.

Factual Basis:

The Board is a "special fund agency" that is totally self-supporting. The Board derives all of its revenue from its applicants and licensees through the collection of examination, licensing and renewal fees.

Protection of the health, safety, and welfare of California consumers is the Board's highest priority. To ensure such protection, the Board is authorized to investigate complaints of unprofessional conduct and unsafe, incompetent practice by licensed vocational nurses and psychiatric technicians. Consequently, to implement a new consumer protection statute that became effective January 1, 2004, the Board must have sufficient revenue to support a budget change proposal to fund this new mandate.

The Board worked closely with the Department of Consumer Affairs' Budget Office to determine the minimum amount needed to fund a mandatory reporting budget change proposal. Without a fee change, the Board cannot fiscally support the implementation of this consumer protection law.

Amend Section 2537.1 Provider's Fees

The existing regulations were superseded by a statutory provision that became effective January 1, 1991. Consequently, the fee amounts cited in the *regulation* are no longer accurate.

Specific Purpose:

The proposed regulatory amendments would clarify existing fee amounts, as specified in statute. The fee amounts currently cited in regulation are obsolete.

Factual Basis:

The proposed amendment clarifies existing law.

UNDERLYING DATA

The September 16, 2005, Board Meeting Report recommending the approval of the Board's fee change proposal for the Vocational Nursing Program.

BUSINESS IMPACT

The regulations will not have a significant adverse economic impact on businesses.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The regulations do not mandate the use of special technologies or equipment.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative to the regulations would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

(10/18/2005)